IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1860 of 2002
with
CIVIL APPLICATION No 6445 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy of the judgement? :

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? :

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? :

DAMYANTIBEN WD/O RAMESHBHAI UKABHAI VAGHELA
Versus
GIRVANTSHINH SAJJANSHINH SOLANKI

Appearance:
1. First Appeal No. 1860 of 2002
MR AV PRAJAPATI for Petitioner No. 1
NOTICE SERVED for Respondent No. 1,2,7-6
NOTICE SERVED BY DS for Respondent No. 1
MS MONALI H BHATT for Respondent No. 2
DELETED for Respondent No. 3
MR MAULIN R RAVAL for Respondent No. 4
MR CB DASTOOR for Respondent No. 5-6

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/08/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

1. The appellant - original claimant no.1 has filed this appeal under Section 173 of the Motors Vehicles Act, against the judgment and order dated 19th June, 2001 passed by the Motor Accident Claims Tribunal (Aux.), Ahmedabad City in Motor Accident Claim Petition no.144 of 1995 (II). By the said judgment, the Tribunal rejected the petition claiming compensation under Section 166 of the Motor Vehicles Act filed by the appellant as well as the present respondent no.1. In the claim petition filed before the Tribunal it was alleged that on 01.07.1994 deceased Rameshbhai Vaghela (husband of the appellant) was on duty as an employee of Ahmedabad Municipal Corporation on tanker bearing registration no.GJ-1-T-7845 and had gone at Vadodara and while he was returning to Ahmedabad, near the office of the Gujarat Electricity Board on National Highway no.8 the original opponent no.3 - Ishwarbhai Ramanbhai Bhoi who was driving aforesaid tanker with rash and negligent driving and dashed the tanker with S.T. bus bearing registration no.GJ-1-Z-2172 and in the said mishap or accident the deceased sustained injuries on his head and during treatment in the LG Hospital at Ahmedabad, he succumbed to the injuries on 07.07.1994. According to the claimants, the deceased in his lifetime was serving as a labourer in Ahmedabad Municipal Corporation and drawing salary to the tune of Rs.2,400=00 p.m. and was also earning Rs.300=00 from labour work after office hours and from that he was maintaining his family and by his untimely death they are left destitute.

2. The original opponents nos.1, 3 and 4 have not filed their written statements. The original opponent no.2 - Gujarat State Road Transport in their written statement at Exh.14 resisted the claim. The opponent no.2 contended inter alia that the accident in question occurred on account of sole negligence of tanker driver i.e. one Ishwarbhai Ramanbhai Bhoi and in the alternative, it was contended that if the Tribunal reaches to the conclusion that the accident in question occurred on account of contributory negligence of opponents nos. 1 and 3, then the liability should be apportioned accordingly amongst the opponents. It was also denied that the deceased was an employee of Ahmedabad Municipal Corporation and was earning

Rs.2,400=00 per month.

3. The Tribunal framed the issues at Exh.16. It appears from the record that the applicants have examined one Manubhai Ukabhai Vaghela at Exh.25 and present applicant at Exh.31. After appreciating the evidence produced on record, the Tribunal has reached to a finding that the applicants have failed to prove that deceased Rameshbhai Vaghela sustained injuries and died as a result of rash and negligent driving of vehicle nos.GJ-1-T-7845 (tanker) and GJ-1-Z-2172 (ST bus) by opponents nos.1 and 3 respectively of ownership of opponents nos. 4 and 2 respectively. The Tribunal also held that the applicants have failed to prove that they are entitled to get compensation of Rs.5,00,000=00 or any part thereof from opponents or any of them. As stated above the said judgment is challenged before us.

4. Learned advocate Mr.A.V. Prajapati appearing for the appellant submitted that the Tribunal has rejected the claim petition on the flimsy grounds, namely that the claimants have not produced the post-mortem note to prove that the deceased died on account of receiving injuries in a vechicular accident only and also the claimants have not produced the pay-slips to show that the deceased was an employee in Ahmedabad Municipal Corporation and he had not led any evidence in respect of income of the deceased. Learned advocate for the applellant submitted that after the marriage life of just two months, applicant's husband passed away and she was under heavy shock and, therefore, she could not give proper instructions to the advocate. He further submitted that even though she had examined herself, she could not produced the same. Only on that fact, her legitimate claim petition claiming compensation cannot be thrown away. Learned advocate has also filed application being Civil Application no.6445 of 2002 for producing additional evidence under Order 41 Rule 27 of the Civil Procedure Code. Ms.Monali Bhatt appearing for opponent no.2 - Gujarat State Road Transport opposed the said application and submitted that the Tribunal was justified in rejecting the claim petition in absence of the documentary evidence.

5. After appreciating the evidence and in particular the judgment, we are of the opinion that the Tribunal while rejecting the petition has observed that the applicants have neither produced the injury certificate of the deceased Rameshbhai Vaghela nor have produced the post-mortem note to prove that the deceased died on account of receiving injuries in a vechicular accident

and, therefore, without any hesitation, it can be said that as such the applicants have not adduced any oral evidence to show that on account of whose negligence the deceased sustained injuries. As far as the compensation part is concerned, the Tribunal has recorded the finding that the claimants have not produced the pay-slips to show that the deceased was an employee in Ahmedabad Municipal Corporation and even had not led any evidence in respect of the income of the deceased. There is no manner of doubt that the aforesaid documents are vital and important to decide the claim petition. The claimants could have produced the same before the Tribunal. However, in the application for additional evidence filed by the appellant - claimant it has been pointed out that the applicant is a widow at the time of filing the Motor Accident Claim Petition and the in-laws of the applicant had taken the signature of the applicant on the Vakaltnama and thereafter she was informed about the status of the proceedings pending in the Court. In fact, after the marriage life of hardly two months her husband passed away and at the relevant time she was under heavy shock. The applicant submits that the applicant came to know about the rejection of the claim petition only recently and thereafter she filed application for certified copy which was received by her on 11th July, 2001. After knowing about the litigation of the aforesaid M.A.C.P., she approached the advocate concerned whereby she came to know that since the documents like post-mortem note as well as salary slips were not produced by her in-laws who were looking after the proceeding of the claim petition, the Tribunal rejected the claim petition. She therefore, obtained the post-mortem note of her husband and she also applied for salary slips of her husband and obtained the same. In paragraph 4 of the application she has also stated that since she was not aware of the status of the proceedings and since her in-laws were looking after the matter and there is no good relation of the applicant with her parents-in-law and, therefore, for some ulterior reason they deliberately did not produce the necessary documents before the Tribunal which ultimately, resulted into rejection of the claim petition. There is no reason to doubt the averments made in the application. Therefore, provisions of Order 41 Rule 27 of the Civil Procedure Code for production of the additional evidence in the appellate Court would come into play. Under the said provisions the Appellate Court has power to allow the parties to grant additional evidence in the Appellate Court as stated therein and also for any other substantial cause if satisfied regarding the genuineness of the reasons stated in the application. We accordingly

grant the Civil Application no.6445 of 2002 by allowing the applicant to produce the post-mortem note as well as salary slip as additional evidence.

6. Since the aforesaid documents were not part of the record before the Tribunal, the Tribunal has rejected the claim petition in absence of these vital documents, we are of the opinion, that ends of justice shall be served if the matter is re-examined by de-novo trial by the Tribunal. Needless to say that the Tribunal shall allow the parties to lead oral as well as documentary evidence and decide the entire petition without in any manner influenced by its earlier judgment and order. The appeal is accordingly allowed. The judgment and order dated 19.06.2001 passed in Motor Accident Claim Petition no.144 of 1995 (II) by Motor Accident Claims Tribunal (Aux.) Ahmedabad City is set-aside. It is further directed that the Tribunal shall decide the matter afresh after allowing the parties to lead oral as well as documentary evidence afresh in accordance with law. Order accordingly. There shall be no order as to costs. Record & Proceedings to be sent back immediately. In view of the fact that the accident had occurred in the year 1997, the Tribunal will give priority to decide the same preferably on or before February, 2004.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

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